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Stephen B. Salal
Harter, Secrest and Emory LLC
1600 Bausch & Lomb Plaza
Rochester, NY 14604

EXAMINER

POPHAM, JEFFREY D

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MENNO ANNE TREFFERS and
ANTONIUS ADRIAAN MARIA STARING

Appeal 2007-3722
Application 09/930,654
Technology Center 2400

Decided: October 23, 2008

Before JAMES D. THOMAS, LANCE LEONARD BARRY,
And STEPHEN C. SIU, *Administrative Patent Judges*.
THOMAS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

In a paper filed on July 21, 2008, Appellants request that we rehear our decision dated May 19, 2008, in which we affirmed the Examiner's rejections under 35 U.S.C. § 103 of all claims on appeal. Since two months

from the date of our prior decision falls upon a Saturday, the next business day is Monday July 29, 2008. Therefore, the request appears to be timely filed. The above-noted panel only recently received the Request for decision.

As correctly noted at the bottom of page 1 of the Request for Rehearing, the actual version of claim 1 set forth at page 2 of the prior decision is not an accurate copy of claim 1 on appeal. We consider this an inadvertent error that does not affect the merits of the decision. The actual version of claim 1 on which we decided this appeal is that reproduced as an appendix to the principal Brief on appeal labeled “Appendix I-Claims on Appeal.” The nature of the analysis in our prior decision should lead the reader to conclude that the claim version used by the panel during our deliberations was the version set forth as an appendix to this Brief.

Notwithstanding these considerations, we strongly remain of the view that we have not misapprehended the scope of independent claim 1 on appeal as urged in the request for rehearing. Several pages of the request repeat in summary form the nature of the disclosed invention and appear to only separately discuss each of the applied prior art to Shear, Downs, and Ginter. The disclosed feature of overcoming a replay attack at the middle of page 3 of the request is not a directly claimed feature but only pertains to the disclosed invention.

At issue in our prior decision as well as a basis of the request for rehearing is the subject matter of the last clause of representative claim 1 on appeal, that feature of “changing a hidden information stored in a hidden channel and used for encrypting or verifying said usage right information

when said usage right information has changed.” This actual claim language is accurately reflected at the top of page 2 of the request. On the other hand, a statement is made at the bottom of page 6, in summary form, that the “claimed invention, in which the hidden information, which is on the record carrier and used for encrypting or verifying usage right information, is changed each time the usage right information has changed” recites an unclaimed feature. This unclaimed feature is the assertion that the hidden information is on the record carrier. There is no recitation that the “hidden information” as well as the “hidden channel” in independent claim 1 on appeal have been recorded or otherwise stored on the claimed record carrier as set forth earlier in claim 1.

The admitted prior art discussed in the paragraph at the middle of page 5 of our prior decision has not been questioned in the request for rehearing. Thus, as we so stated, everything recited before the “characterized in that” clause at the end of representative claim 1 on appeal, which is at issue in this appeal, was known in the art anyway. Any arguments that could have been made as to this finding have been waived.

The bulk of the positions set forth in the request do not appear to directly address our analysis set forth in our prior decision. In fact, the bulk of the discussion beginning at the bottom of page 6 to the top of page 9 of our prior decision addresses in detail, beyond what the Examiner has relied upon, additional teachings in the three references applied by the Examiner in the first stated rejection. Of particular mention is the last full paragraph at the bottom of page 8 of our prior decision expressing our agreement with the Examiner’s alternative analysis for the clause in question in this appeal

regarding the alternative recitation of either encrypting “or” otherwise verifying usage right information. The claim is thus much broader than Appellants would appear to suggest even in this rehearing Request. From an artisan’s perspective, when the usage right information has changed, correct verification of the mere usage right information that has been changed must be required for proper usage only of the claimed digital work. Whereas, the emphasis in the arguments to us in this appeal is upon the feature of “encrypting”, the claim merely requires the features of changing the hidden information stored in a hidden channel (wherever it is located) and merely requiring the alterative use “for encrypting or verifying said usage right information.”

As set forth in our prior decision, we remain strongly of the view, consistent with the Examiner’s application of the applied prior art, that it would have been obvious to have changed any manner of consideration of what comprises hidden information stored in a hidden channel that may be used for encrypting or verifying usage right information when the usage right information itself has changed as required by the argued clause of representative independent claim 1 on appeal. The teachings of Appellants’ admitted prior art we noted earlier in this opinion as well as at the middle of page 5 of our prior decision, taken with the teachings of the applied prior art we noted in our prior decision clearly would have been so encompassing as to have rendered obvious the changing of hidden information in a hidden channel even on a record carrier or within a record carrier reader to the

extent broadly recited within representative independent claim 1 on appeal, when the usage right information originally recorded on the carrier itself has been changed.

Therefore, we are unpersuaded of any misapprehension or error in our prior decision. In view of the foregoing, we have considered in detail Appellants' request for rehearing of our prior decision, but are not persuaded by the Request to make any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

pgc

Stephen B. Salal
Harter, Secrest and Emory LLC
1600 Bausch & Lomb Plaza
Rochester, NY 14604